

TESTIMONY
OF
DICK SMITH
OF
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BEFORE THE
SUBCOMMITTEE ON FINANCE AND HAZARDOUS MATERIALS
Field Hearing on Federal Barriers to Common Sense Cleanups
Columbus, Ohio

COMMITTEE ON COMMERCE
U.S. HOUSE OF REPRESENTATIVES

FEBRUARY 14, 1997

Mr. Chairman and Members of the Subcommittee:

My name is Dick Smith and I am President of Bob Daniels Buick in Columbus, Ohio. Our dealership was founded in 1950 by Bob Daniels. I joined in 1964 and today we have 66 employees. I am the current President of the Ohio Automobile Dealers Association (OADA) as well as a member of National Automobile Dealers Association (NADA). I would like to thank Chairman Oxley and the Commerce Committee for conducting hearings into EPA's flawed Superfund program and its impact on small businesses, particularly my dealership in Ohio. Presently, I am mired in litigation at two sites that are being cleaned up pursuant to EPA's Superfund program: the Granville Solvents site in Granville and the XXKEM site near Toledo.

Granville Solvents Company operated a solvent recovery and recycling business from the 1970s until 1986, when it was closed by the Ohio EPA because of environmental law violations. Four years later, Ohio EPA began a two-year process to remove sources of contamination from the site. After discovering evidence of groundwater contamination, they requested assistance from the U.S. Environmental Protection Agency. After being largely unresponsive to the request, the EPA discovered in November 1993 that the contamination had spread to a monitoring well near a municipal water supply. Suddenly, EPA was embarrassed into taking action, and in February and March 1994, sent a General Notice of Potential Liability to about 120 companies, the Ohio Department of Transportation, and several car dealerships, including Bob Daniels Buick. EPA demanded our company admit liability for the cleanup of the Granville Solvents Company site, based on shipments of waste solvent that we sent there for recycling and reuse. They also insisted

that we immediately undertake the cleanup of the site or face penalties of \$25,000 per day plus treble damages.

Mr. Chairman, we made the shipments entirely in compliance with all environmental, health and safety laws and regulations. Neither the U.S. EPA nor the Ohio EPA has suggested to the contrary. In all, we made eight (8) shipments totaling 1,143 gallons of solvent to the Granville Solvents Company for recycling from 1983-1986. We properly executed the hazardous waste manifest each time. Yet, we were never informed by EPA that there were any problems at the site.

We were fortunate to be able to join seven (7) other companies, including some auto dealers, who combined resources in their legal representation, sharing some of the substantial transactional costs we incurred. However, one of the problems created by the Superfund law is that with strict and joint and several liability, we have to compel other PRPs to pay a share of the costs of cleanup. In the absence of a viable business, their share of the cost and responsibility at the site then becomes our financial burden. This requires lawsuits in many instances which further drives up the costs of settlement. On top of that, the U.S. EPA has demanded that it be reimbursed for the time spent “investigating” the site.

The total cost of the cleanup at the Granville Solvents site, including reimbursement of the federal government, will exceed \$7 million. The largest contributor of waste at the site became bankrupt during the eight (8) years that it took the government to recognize the problem and act on it. As a result, the unfair liability imposed on me became even more pronounced and our share of the cost

became larger than what it would have been. Our liability will total over \$40,000, plus substantial attorneys fees and my own administrative expense of having staff respond to requests for information, etc. The current system is simply not working.

The second site at which I am involved is the XXKEM site in Toledo. The XXKEM Company operated a fuel blending and brokerage from 1989 until the early 1990s. During that time, the company purchased waste solvent and recycled it or sold it as fuel for burning and other purposes. Car dealerships such as ours sent their waste solvent to the site for recycling and further use. As with the Granville site, we and all other shippers were fully in compliance with all applicable environmental laws. The facility was properly licensed to operate until the date it was shut down. Once again, neither the U.S. nor Ohio EPA gave us any indication there were problems at the site.

The EPA removed approximately 1,800 drums and 17 storage tanks of spent solvent from the site, 11,000 drums of other hazardous waste, and other contaminants. They claim to have incurred over \$1 million in the removal activity. In February 1996, EPA attempted to notify over 1,000 companies that they were PRPs in the matter, and were responsible for the removal cost incurred thus far, as well as the full cleanup costs for the site.

During the three years between the completion of the removal activities on the surface by EPA and the time they decided to notify the potentially responsible parties who shipped waste solvent and oil to the site, there is very little record of EPA activity. Thus far, they have not performed a detailed study of the site to determine the extent of contamination and failed to estimate what the eventual

cleanup cost will be for the subsurface contamination.

EPA has been repeatedly urged by our counsel to begin an assessment of the site and make a determination of the overall cost of cleanup. We desire to have this information known as soon as possible so that we can know at the outset the extent of our total exposure. As years pass with inaction, the contaminants that are present in the ground will continue to migrate, creating an increasing expense for the eventual cleanup. Moreover, we are concerned that as time passes, it will become increasingly more difficult to find viable generators to help share the cost of the cleanup, increasing the burden on those like my dealership who have to pay not only our own share but that of others who are not available.

Mr. Chairman, as a businessman who complied with all federal, state and local regulations regarding the disposal of dealership wastes, I am utterly amazed at the legal entanglements I have endured and am frustrated by the exorbitant liability I am being forced to assume. This is especially galling given that I sent my spent solvents to be recycled and relied on authorized transporters and licensed sites. In the vast majority of Superfund sites where auto dealers have been designated as PRPs, liability has centered around efforts to recycle solvents, used oil and spent batteries. In most instances, including my own experience, auto dealers demonstrated environmental responsibility by sending their wastes to licensed recycling or reprocessing facilities. As a variation of an old adage goes, “No good deed goes unpunished.”

As I mentioned earlier, the current joint and several, retroactive, and strict liability system of

Superfund is unduly harsh on small businesses. Under this liability scheme, **any** contributor to a site is potentially responsible for the entire cost of cleaning a Superfund site, even if the volume of waste they contributed to the site was minimal. Under retroactive liability, small businesses can be held liable for clean-ups that resulted from alleged waste management activities occurring years or even decades ago. It need not be demonstrated that a small business was negligent or at fault to establish liability.

Like many of my fellow dealers in Ohio and across the nation, I sent my wastes to recycling facilities. The solvents in question were stored in compliance with all applicable regulations in effect at the time, not mixed with other chemicals, and were transported by licensed haulers to licensed facilities which were designed to recycle a resource for reuse.

I don't know what steps I could have taken to be more environmentally responsible. This law must be changed. I strongly urge the Committee to exclude from liability all persons who sent their wastes to recycling or re-refining facilities. Don't allow the law to continue punishing persons who made efforts to act in an environmentally responsible manner and who were not themselves negligent.

Thank you again, Congressman Oxley, for the opportunity to express my views. My story is just one of many businesses that have been unjustifiably burdened by an unfair system. I hope my statement will give you and your colleagues a clearer picture of the devastation wreaked on my dealership and America's small business community by Superfund. I also hope this committee and

the Congress, in general, will continue to insist that the incredible inequities placed on small business owners by this law be corrected this year.